

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: March 15, 2016

To: The Commission
(Meeting of March 17, 2016)

From: Hazel Miranda, Director
Office of Governmental Affairs (OGA) – Sacramento

Subject: **SB 1112 (Cannella) – Utilities: water and sewer systems corporations: transactions.**
As introduced: February 17, 2016

RECOMMENDED POSITION: SUPPORT AS SPONSOR

SUMMARY OF BILL

The bill would add Section 853.2 to the Public Utilities Code. Proposed Section 853.2 would give the California Public Utilities Commission (CPUC) discretion to retroactively approve certain transactions involving water or sewer utilities with fewer than 2,000 service connections when the utility does not first obtain the CPUC's approval.

CURRENT LAW

Under Public Utilities (PU) Code Section 851, public utilities may not "sell, lease, assign, mortgage, or otherwise dispose of, or encumber" any "property necessary and useful in the performance of its duties to the public" without obtaining the Commission's prior approval. Under PU Section 854, no "person or corporation . . . shall merge, acquire, or control either directly or indirectly any public utility . . . in this state" without obtaining the Commission's prior approval. If a utility subject to those laws transfers property or control without obtaining the Commission's prior approval, the transaction is **void** – legally, it is as if it never happened. See, e.g., *Henderson v. Oroville-Wyandotte Irr. Dist.* (1931) 213 Cal. 514, 529-530 ("No sale of property burdened with a public use is legal, or of any validity whatever, unless the authority to make such sale is first given by the . . . Commission.").

AUTHOR'S PURPOSE

To add to the Public Utilities Code discretion for the CPUC to approve transfers of utility property in the public interest (after the fact) when the person or corporation does not obtain prior approval.

DIVISION ANALYSIS (Legal Division)

Currently, there are a number of small water and sewer companies who lack the regulatory expertise to comply with Section 851, or even to know that it exists. Legal Division is aware of a number of small water companies that have been sold in violation of Section 851, sometimes multiple times; and these sales often go unreported for many years. In such cases, before the Commission can officially award the public utility rights and obligations to the current "owner", the Commission is obliged to identify and locate the last legal owner of record, who may have had nothing to do with the company for decades. This is exceedingly difficult.

This bill would give the Commission the flexibility and discretion to void such transactions or to approve them retroactively, imposing such conditions as the Commission deems appropriate to protect ratepayers. The bill would also allow the Commission to delegate the authority to make that determination to the director of DWA, or its successor entity.

The bill, as drafted, would also allow the Commission retroactively to approve the transfer of control of a small water or sewer utility to a larger utility. The benefit of this provision is less clear to Legal Division, but it does not seem to be actually detrimental, so long as the Commission retains the authority either to void the transaction or to impose necessary conditions.

The bill would have no impact on the other industries (e.g., energy, telecommunications, transportation) regulated by the Commission.

SAFETY IMPACT

No direct impact on safety.

RELIABILITY IMPACT

No direct impact on liability.

RATEPAYER IMPACT

Transfers must be deemed appropriate—and in the interest of ratepayers. This change in the law would permit the CPUC to exercise discretion and approve transfers after-the-fact that are in the interest of ratepayers.

FISCAL IMPACT

Minor and absorbable.

ECONOMIC IMPACT

No direct economic impact. Historically, transfers of utility property that would be *voidable* involve small water and sewer companies. Because these companies are small the statewide economic impact is not significant.

PROGRAM BACKGROUND

The CPUC may construe the property rights of a utility for the purposes of exercising its regulatory or ratemaking authority. (Camp Meeker Water System, Inc. v. Public Utilities Com. (1990) 51 Ca1.3d 845, 861.)

However, the CPUC only undertakes to resolve these issues when necessary as part of its broader regulatory mandate. "Normally, it is not the Commission's function to determine title to or ownership of public utility property." (Re Golconda Utilities Co. (1968) 68 Cal.P.U.C. 296.)

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION

This modification of law has the potential to aid-

- 1) ratepayers of a beneficial small water or sewer utility transfer that for which prior approval was not obtained;
- 2) small water or sewer utilities efficiently and effectively serving ratepayers; and
- 3) the CPUC in permitting discretion to ratify of beneficial transfers that would otherwise be void under the law.

SUPPORT/OPPOSITION

None one file.

STATUS

February 25, 2016 referred to Senate Energy, Utilities & Communications.

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BILL LANGUAGE:

SB 1112 (Cannella), as introduced February 17, 2016, Utilities: water and sewer systems corporations: transactions:

http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201520160SB1112